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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA :
v. : CRIMINAL NO. 01-CR-224-01
ALFRED A. MELE, :
Defendant :

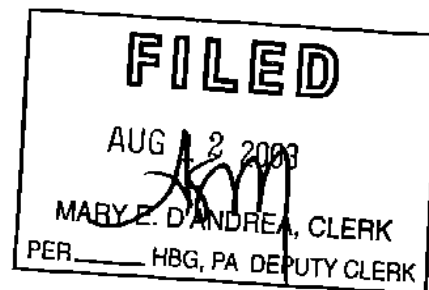
TRANSCRIPT OF PROCEEDINGS

HEARING ON A 2255 MOTION

Before: Hon. Sylvia H. Rambo, Senior Judge

Date: July 25, 2003

Place: Courtroom No. 3
Federal Building
Harrisburg, Pa.



COUNSEL PRESENT:

CHRISTY H. FAWCETT, Assistant U.S. Attorney

For - Government

CHERYL J. STURM, Esquire

For - Defendant

Monica L. Zamiska, RPR
Official Court Reporter

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1 THE COURT: Good morning, everyone.

2 MS. FAWCETT: Good morning, Your Honor.

3 MS. STURM: Good morning, Your Honor.

4 THE COURT: This is the time and place for the
5 hearing on the 2255 motion of Alfred Mele. Are we ready to
6 proceed?

7 MS. STURM: We are, Your Honor.

8 THE COURT: Proceed.

9 MS. STURM: Thank you. Your Honor, we request to
10 sequester the witnesses.

11 THE COURT: That's fine. Anybody who is here as a
12 witness in this case may step out in the hall. Well, I don't
13 know whether --

14 MS. STURM: If I could just advise the Court, that
15 it was my intention to call Mr. Boyle first, with the Court's
16 permission, so it would be Mr. Gephart and Mrs. Mele.

17 THE COURT: Okay, fine.

18 (The witnesses left the courtroom.)

19 THE COURT: Mr. Boyle, do you want to take the
20 stand?

21 THE WITNESS: Yes, Your Honor.

22 DENNIS E. BOYLE, called as a witness, being duly
23 sworn or affirmed, testified as follows:

24 THE CLERK: Would you state your name for the
25 record please.

1 THE WITNESS: Dennis E. Boyle.

2 THE CLERK: And would you spell your last name
3 please.

4 THE WITNESS: B-o-y-l-e.

5 THE CLERK: Thank you.

6 DIRECT EXAMINATION

7 BY MS. STURM:

8 Q Mr. Boyle, would you state your occupation please.

9 A Yes, I'm an attorney.

10 Q And your business address?

11 A 200 North Third Street, P.O. Box 810, Harrisburg,
12 Pennsylvania 17108.

13 Q And how many years have you been practicing law?

14 A About 16.

15 Q And do you have an estimate as to how many federal
16 criminal cases you had handled at the time that you began
17 representing Mr. Mele?

18 A It had been several. I don't have an estimate at this
19 point in time.

20 Q And is it correct that at some point in time you did
21 begin representing the defendant here, Alfred Mele?

22 A Yes, that's true.

23 Q And do you recall when you began representing him?

24 A It was approximately October 3 or 4 of the year 2000.
25 The CJA 20 form was actually signed on the 5th, but I

1 received a memo from the court on the 3rd.

2 Q And were you retained or appointed?

3 A I was appointed.

4 Q And what was the status of the case when you began
5 representing Mr. Mele?

6 A Mr. Mele had received a target letter. There had not
7 been an indictment or information issued at that point in
8 time.

9 Q When did you first meet with Mr. Mele?

10 A I believe I met with Mr. Mele on October 4.

11 Q Of the year --

12 A Of the year 2000.

13 Q Thank you, and who was the Assistant United States
14 Attorney assigned to Mr. Mele's case?

15 A It was Christy Fawcett.

16 Q Did you have any discussions with Miss Fawcett prior to
17 meeting with Mr. Mele?

18 A Yes, I did. I talked to Miss Fawcett, as I recall, I
19 think Miss Fawcett is the person who contacted me or shortly
20 after the clerk, who indicated that I would be appointed to
21 represent the case, and I went over briefly the facts, you
22 know, what the case was about.

23 Q Was there any discussion of a possible plea agreement
24 from Mr. Mele in your discussions with Miss Fawcett at that
25 time?

1 A I don't recall at that time if there was or not on that
2 first telephone conversation.

3 Q At your first meeting with Mr. Mele did you have any
4 discussions with him as to whether he should enter a plea or
5 go to trial?

6 THE WITNESS: Your Honor, at this time I think I
7 would need to make an objection based upon the
8 attorney/client privilege unless it's waived.

9 THE COURT: Unless he waives it.

10 MS. STURM: May I consult with my client for one
11 moment, Your Honor?

12 THE COURT: Yes.

13 (Ms. Sturm and the defendant spoke off the record.)

14 MS. STURM: Mr. Mele is willing to waive the
15 privilege, Your Honor.

16 THE COURT: I think we need to put it on the
17 record.

18 MS. STURM: Certainly.

19 THE COURT: Mr. Mele, do you understand the nature
20 of the attorney/client privilege? That means that
21 discussions that you have during representation between you
22 and your counsel, your counsel cannot be forced to relate any
23 conversations that have taken place in that position as
24 during attorney/client representation, and only you can waive
25 that. Are you willing to waive that confidentiality?

1 THE DEFENDANT: Yes, I am.

2 THE COURT: Okay. Go ahead.

3 A I'm sorry, the question was --

4 BY MS. STURM:

5 Q At your first meeting with Mr. Mele did you discuss
6 with him whether he should enter a plea or go to trial in
7 this matter?

8 A I advised Mr. Mele of his options to either cooperate
9 with the government and try to work out a negotiated
10 settlement or his options to go to trial, if that's what he
11 chose to do.

12 Q And what was Mr. Mele's response to a -- the
13 possibility of entering into a plea?

14 A I think after we fully discussed it, Mr. Mele wanted to
15 cooperate with the government at that point in time. Just in
16 terms of a plea, we did not have the specific plea agreement
17 available at that point in time, so there was no specific
18 plea discussed. I just spoke to him in general terms about
19 what his rights were and sought his advice or his direction
20 as to whether we should go for a negotiated plea or start
21 preparing for trial, and at that time he wanted to work with
22 the government.

23 Q And did working with the government include
24 cooperation?

25 A Yes, it did.

1 Q Did Mr. Mele voice any opposition to cooperation to
2 you?

3 A Not that I recall.

4 Q And did Mr. Mele cooperate with the government?

5 A Yes, he did.

6 Q Did Mr. Mele enter into a plea agreement while you were
7 representing him?

8 A Yes, he did.

9 Q And do you recall the dates -- the date on which the
10 plea agreement was signed by you and Mr. Mele?

11 A Um, I recall that it was in mid October.

12 Q Of the year --

13 A Of the year 2000.

14 Q And do you recall when the government signed the plea
15 agreement?

16 THE COURT: Wouldn't that be a matter of record on
17 the actual plea agreement?

18 BY MS. STURM:

19 Q Was there some passage of time between the time you and
20 Mr. Mele signed the plea agreement and the time the
21 government signed the plea agreement?

22 A I can't recall offhand. I can say there was quite a
23 passage of time between the time we signed the plea agreement
24 and the time the information was filed and the plea agreement
25 was filed with the court, but I don't recall specifically

1 when the government signed it.

2 Q And do you recall the charges to which Mr. Mele pled
3 under the plea agreement?

4 A Yes, I do.

5 Q And what were those charges?

6 A Money laundering and interstate -- it was a title
7 offense, as I recall.

8 Q And did you have any discussions with Miss Fawcett as
9 to what charges Mr. Mele would be pleading to?

10 A Yes, I did.

11 Q And what, if anything, did you say to Miss Fawcett
12 regarding the charges?

13 A When I became involved in the case, you know, I would
14 have liked to have avoided the money laundering charge, but I
15 was told by the government that that was not possible.

16 Q And was a reason given to you as to why it was not
17 possible to drop the money laundering charge?

18 A I was aware that Mr. Mele had been offered the
19 opportunity to cooperate I believe in 1999 and that he had
20 declined to cooperate at that period of time and that that
21 was -- was a reason or one of the reasons.

22 Q And who told you that Mr. Mele had declined to
23 cooperate?

24 A I believe Miss Fawcett did.

25 Q Did Mr. Mele ever tell you that he had declined to

1 cooperate?

2 A I believe -- I'm not sure about that phraseology. Mr.
3 Mele was aware that he had been contacted by the government
4 in '99, and at that time there was no cooperation.

5 Q Did he give you any explanation as to why there was no
6 cooperation?

7 A He did. This was -- the central thing to my way of
8 thinking at the time was that there had not been cooperation.
9 The reason why didn't really help me with my representation
10 of Mr. Mele. As I recall, he had indicated that his attorney
11 had told him not to cooperate or something of that nature. I
12 think, as I sit here, I recall Mr. Mele telling me that his
13 prior counsel had advised him not to cooperate.

14 Q Did you have any discussions with Mr. Mele about
15 pleading guilty to the charge of money laundering?

16 A Yes, I did.

17 Q And what, if anything, did Mr. Mele say to you
18 regarding having to plead to the charge of money laundering?

19 A Mr. Mele told me that that was not part of the original
20 agreement that had been offered to him and that he didn't
21 think he should have to plead to money laundering.

22 Q Do you recall whether the fact that Mr. Mele pled
23 guilty to the charge of money laundering increased his
24 sentencing guidelines in any way?

25 A Yes, it would have.

1 Q And do you recall how that would have increased the
2 guidelines?

3 A No, I do not.

4 MS. STURM: Your Honor, with the Court's
5 permission, may I show the defendant a copy of the
6 presentence report?

7 THE COURT: Yes. The defendant or the witness?

8 MS. STURM: I'm sorry, the witness.

9 BY MS. STURM:

10 Q Mr. Boyle, could you look at page 4 of the presentence
11 investigation report.

12 THE COURT: Hold on until I get my copy of it. I
13 have it. What page?

14 MS. STURM: Page 4, Your Honor. I'm looking at the
15 guideline calculations.

16 THE COURT: Yes.

17 BY MS. STURM:

18 Q Is there any points assessed for the charge of money
19 laundering?

20 A The 2 point enhancement?

21 Q Yes.

22 A Yes.

23 Q Okay, is that your understanding of how pleading to the
24 charge of money laundering impacted Mr. Mele's case?

25 A Yes.

1 Q Did Mr. Mele receive a downward departure for
2 cooperation?

3 A Yes, he did.

4 Q In your experience as a defense counsel is the
5 timeliness of cooperation important in the government's
6 recommendation for the extent of downward departure?

7 A In my experience it has been, yes.

8 Q Do you have an opinion in this case as to whether the
9 fact that Mr. Mele did not begin cooperating until you were
10 his attorney have any impact on the amount of downward
11 departure he received?

12 A Yes, it's my opinion that had he cooperated sooner, he
13 would have gotten a greater downward departure.

14 MS. STURM: I don't have any further questions at
15 this time, Your Honor.

16 THE COURT: Cross examine.

17 CROSS EXAMINATION

18 BY MS. FAWCETT:

19 Q Mr. Boyle, were you aware at the time you began
20 discussing this case with Mr. Mele that other defendants or
21 other potential defendants in this case were cooperating with
22 the government as well?

23 A Yes, I was.

24 Q And did you convey that information to Mr. Mele?

25 A Yes, I did.

1 Q In your opinion did that information, the fact that
2 other defendants were cooperating and be cooperating against
3 him, affect his decision to cooperate with the government?

4 A Um, I suppose it was a factor. I didn't ask Mr. Mele
5 which factors caused him to cooperate.

6 Q Did you advise Mr. Mele that because of the fact that
7 other defendants were cooperating in this case and would
8 potentially provide information regarding him it would be in
9 his best interest to cooperate?

10 A Yes, I did.

11 Q And are you aware of whether in 1999 other defendants
12 were cooperating with the government in this investigation at
13 the time Mr. Mele was represented by Mr. Gephart?

14 A I was aware -- I'm not exactly sure what happened and
15 who was cooperating before my involvement in the case. I'm
16 aware at the time that I met with Mele, Mr. Mele, there were
17 already people cooperating.

18 Q Are you aware of whether or not Mr. Mele was one of the
19 first individuals who was approached for cooperation back in
20 1999?

21 A It was my understanding he was one of the first
22 individuals approached.

23 Q Okay. That was, of course, at the time that he
24 declined to cooperate with the government?

25 A That would be my understanding.

1 Q And it is your understanding that at the time he
2 changed his mind and decided to cooperate with the government
3 he was aware through you and through your advice that a
4 number of other people were cooperating and would be
5 cooperating against him?

6 A That's, that's correct.

7 Q And you said, if I understand your testimony correctly,
8 that you recall a conversation in which your client conveyed
9 to you or you at least received the impression from your
10 client that he had been advised not to cooperate by his prior
11 counsel?

12 A That's what he told me.

13 Q Do you have anymore specific recollection of that
14 conversation?

15 A I specifically recall the conversation. I recall the
16 context that it came up in, and it came up in the context of
17 the plea to the money laundering charge in early October. In
18 terms of more specific recollection, what do you mean?

19 Q Do you remember anything else that he said to you or
20 you said to him?

21 A No, we spoke for about two hours on that day.

22 Q Okay, and you just indicated I believe that it came up
23 in the context of pleading to the money laundering charge?

24 A That's correct.

25 Q And can you explain that context?

1 A Yes, Mr. -- after I had talked to you and gotten what I
2 believed the best deal we could get for Mr. Mele was, I
3 presented it to Mr. Mele. It included a charge of money
4 laundering. Mr. Mele told me that the initial offer to him
5 did not require him to plead to money laundering and that
6 therefore he didn't think he should have to plead to money
7 laundering at this point in time. I explained to him that in
8 my opinion and my experience that probably the timeliness of
9 the cooperation changed the circumstances that he would be
10 able to plead under. We also talked about the elements of
11 money laundering, what activities constituted money
12 laundering and whether the activity he engaged in constituted
13 money laundering.

14 Q Did you do anything to memorialize your recollection of
15 that conversation, specifically the portion of the
16 conversation that you recall the defendant telling you that
17 his prior attorney had told him not to cooperate?

18 A I did not.

19 MS. FAWCETT: I have no further questions.

20 THE COURT: Redirect.

21 MS. STURM: None, Your Honor.

22 THE COURT: You may step down.

23 THE WITNESS: Thank you, Your Honor.

24 Your Honor, are these exhibits?

25 THE COURT: Just leave them there. Thank you. Are

1 those exhibits numbered?

2 MS. STURM: It was the presentence investigation
3 report.

4 THE COURT: Do they have an exhibit number?

5 MS. STURM: They don't. I can add it so that it's
6 now considered part of the record. May I mark it as P 1?

7 THE COURT: Yes. Are they separate?

8 MS. STURM: This is just the instructions that come
9 -- sorry, it is separate, Your Honor, P 1 and P 2.

10 THE COURT: Thank you. Are you going to leave them
11 up there then?

12 MS. STURM: Yes.

13 THE COURT: Just put them right here.

14 MS. STURM: Your Honor, with the Court's permission
15 I call Maryann Mele to the stand.

16 THE COURT: Okay. You'll have to get her from
17 outside.

18 MARYANN MELE, called as a witness, being duly sworn
19 or affirmed, testified as follows:

20 THE CLERK: And would you state your name please.

21 THE WITNESS: Maryann Mele.

22 THE COURT: Speak into the microphone.

23 THE WITNESS: Maryann Mele.

24 THE CLERK: Would you spell your first name?

25 THE WITNESS: M-a-r-y-a-n-n.

1 THE COURT: Two words or one word?

2 THE WITNESS: One.

3 DIRECT EXAMINATION

4 BY MS. STURM:

5 Q State your address for the record please, Mrs. Mele.

6 A 36 Bradford Street.

7 Q And where is that?

8 A That's Old Bridge, New Jersey.

9 Q And what is your relationship to the defendant Alfred
10 Mele?

11 A He's my husband.

12 Q Were you aware that your husband had hired an attorney
13 Bart Gephart?

14 A Yes.

15 Q And did you at any time have any conversation with Mr.
16 Gephart in person?

17 A No.

18 Q Did you at any time have any conversation with Mr.
19 Gephart over the telephone?

20 A No.

21 Q Did you at any time tell Mr. Gephart that your husband
22 was not interested in pleading guilty?

23 A No.

24 MS. STURM: No further questions, Your Honor.

25 THE COURT: Cross.

1 CROSS EXAMINATION

2 BY MS. FAWCETT:

3 Q You have no memorialization of your lack of
4 conversations with Mr. Gephart. Is that correct, Mrs. Mele?

5 A Uh-huh.

6 MS. FAWCETT: I have no further questions.

7 THE COURT: You may step down.

8 MS. STURM: Your Honor, the Court calls Alfred
9 Mele. I'm sorry, defense calls Alfred Mele.10 ALFRED MELE, called as a witness, being duly sworn
11 or affirmed, testified as follows:

12 THE CLERK: Would you state your name please.

13 THE WITNESS: Alfred Mele.

14 THE CLERK: Thank you.

15 DIRECT EXAMINATION

16 BY MS. STURM:

17 Q Mr. Mele, could you tell the Court what your present
18 designation is?

19 A Where I am now?

20 Q Yes.

21 A Schuylkill Camp.

22 Q And when did you learn you were under investigation by
23 federal authorities?24 A When my wife was home, they came to my house and left a
25 card.

1 Q Do you recall when that was?

2 A No.

3 Q What was your first contact with any government
4 representative from the U.S. Attorney's Office?

5 A I called Agent Stewart and just made a date for me to
6 come down there.

7 Q After you spoke to Agent Stewart did you contact any
8 attorney?

9 A Yes.

10 Q And who was that?

11 A I called an attorney, but it was his machine, and it
12 was in Columbia, I forget his name, but about two, three days
13 before I had to come down he got back to me and recommended
14 Bart Gephart.

15 Q And did you hire Mr. Gephart to represent you?

16 A Yes, I -- yes.

17 Q And when was the first time you met with Mr. Gephart?

18 A At his office.

19 Q And you --

20 THE COURT: Wait a minute, he's been asked a couple
21 of times about when, and we have yet to get any dates.

22 BY MS. STURM:

23 Q Do you recall the year in which you met with Mr.
24 Gephart?

25 A I guess 2000.

1 Q Do you recall the occasion that caused you to come and
2 meet with Mr. Gephart?

3 A Oh, I had to go up and talk to Sally Ride and Agent
4 Stewart.

5 Q Was that your first meeting with anybody from the U.S.
6 Attorney's Office?

7 A Yes.

8 Q And where did you meet with Mr. Gephart?

9 A In his office.

10 Q And what did you and Mr. Gephart discuss at that
11 meeting?

12 A When I first came in?

13 Q Yes.

14 A Nothing. I just told him my name, introduced myself,
15 and then he made a phone call, and he said to -- "Okay, let's
16 go up."

17 Q And where did you and Mr. Gephart go?

18 A To the Federal Building.

19 Q And who did you meet with there?

20 A With U.S. Attorney Sally Ride --

21 THE COURT: I think the name is Lied, L-i- --

22 A Lied, Lied, sorry, and Agent Stewart.

23 BY MS. STURM:

24 Q And did you do anything else besides meet with these
25 two individuals in the courthouse, I'm sorry, in the Federal

1 Building?

2 A No.

3 Q Did you look at any papers that day?

4 A Yes.

5 Q And what kinds of papers were they?

6 A Papers that I had signed in purchasing cars.

7 Q Were there papers bearing your names then, your name?

8 A Not my exact name, no, names that I wrote, fictitious
9 names.

10 Q Were there documents that had your handwriting on them?

11 A Handwriting on them, yes.

12 Q And did they -- what did the documents have to do with?

13 A Purchasing the cars.

14 THE COURT: Car titles?

15 THE WITNESS: They were some titles and other
16 paperwork, bill-of-sales.

17 BY MS. STURM:

18 Q Before you went over to the Federal Building that day
19 did Mr. Gephart give you any advice about what to do or not
20 to do?

21 A Yes, he said, "You need not say anything at this time."

22 Q Did Mr. Gephart review the papers with you that you
23 were looking at in the Federal Building?

24 A No.

25 Q After you left the U.S. Attorney's Office did Mr.

1 Gephart give you any advice as to the strength of the
2 government's case against you?

3 A No.

4 Q What happened after you and Mr. Gephart finished your
5 review of the papers at the U.S. Attorney's Office?

6 A Well, he said to wait down in his office for him and he
7 would be down shortly. So I went down, and then shortly he
8 came down, and do you want me to say the whole thing what
9 happened in the office?

10 Q Yes, would you tell us what Mr. Gephart said when he
11 returned to the office and met with you?

12 A He said -- he came down, and he said, "They offered to
13 drop the money laundering charge and to leave your son alone
14 for your cooperation." So I said, "Oh, okay." Then he said,
15 "Tell me exactly your involvement in this case." So I
16 started telling him about my involvement. And shortly
17 thereafter, maybe 10, 15 minutes later as I was speaking, he
18 interrupted me and said, "You're more of a central figure."
19 He said, "Forget it." He said, "I don't do trial work
20 anymore," he said, "but I have an associate in the office
21 here that is an excellent trial lawyer," and then he said a
22 few other things. And then he said -- looked at me and said,
23 "You're free to go now." So I said, "I'm free to go?" He
24 said, "Yes, you're free to go," and I left.

25 Q And did you -- how did you interpret Mr. Gephart's

1 statement when he said to --

2 A I --

3 THE COURT: Let her finish the question.

4 BY MS. STURM:

5 Q -- when he said forget it, how did you interpret that
6 statement?

7 A They didn't want my -- they didn't want me to -- they
8 didn't want my cooperation, and they wanted to take me to
9 trial. As soon as he mentioned that he doesn't do trial work
10 anymore, that's what he was telling me.

11 Q Did you tell Mr. Gephart on the day that you went to
12 the Federal Building and the same day that you're talking
13 about this meeting in his office, did you tell him that day
14 that you were not interested in pleading guilty?

15 A No.

16 Q Did you tell him on that day that you were not
17 interested in cooperating with the government?

18 A No.

19 Q Did you ever tell Mr. Gephart that you were not
20 interested in pleading guilty?

21 A No.

22 Q Did you ever relay -- did you ever tell Mr. Gephart you
23 were not interested in cooperating with the government?

24 A No.

25 Q Did you ever relay a message to Mr. Gephart through

1 anyone else that you were not interested in pleading guilty
2 in this case?

3 A No.

4 Q Did you ever relay a message to Mr. Gephart through
5 anyone else that you were not interested in cooperating in
6 this case?

7 A No.

8 Q To your knowledge did your wife call Mr. Gephart and
9 tell him you would not enter into a plea agreement?

10 A No.

11 Q Did you tell your wife you were not interested in a
12 plea agreement?

13 A Did I tell her --

14 Q Did you tell your wife you were not interested in a
15 plea agreement?

16 A No, no.

17 Q Did Mr. Gephart at any time advise you that you should
18 plead guilty and cooperate in this case?

19 A No.

20 Q Did Mr. Gephart ever tell you of a general rule that
21 people who plead guilty early receive a lower sentence than
22 those who plead later?

23 A No.

24 Q Did Mr. Gephart at any time explain to you that there
25 are sentencing guidelines that would determine the range of

1 your sentence?

2 A No.

3 Q Did he explain federal sentencing guidelines to you in
4 any way?

5 A No.

6 Q Did he explain the crime of money laundering to you?

7 A No.

8 Q Did Mr. Gephart explain the crime of conspiracy to
9 commit interstate transportation of falsely made and forged
10 securities to you?

11 A No.

12 Q If Mr. Gephart had informed you that the smartest
13 course of action was to plead guilty and cooperate, what
14 would you have done?

15 A Pled guilty, cooperate.

16 Q At any time after the day on which you and Mr. Gephart
17 met at the Federal Building did Mr. Gephart contact you about
18 the case?

19 A No.

20 Q At some point in time you had a lawyer other than Mr.
21 Gephart. Is that correct?

22 A Yes.

23 Q And who was that lawyer?

24 A Dennis Boyle, Dennis E. Boyle.

25 Q And did you enter into a plea agreement when Mr. Boyle

1 was representing you?

2 A Yes.

3 Q Did you cooperate with the government after Mr. Boyle
4 was representing you?

5 A Yes.

6 Q How long were you represented by Mr. Boyle before you
7 agreed to plead guilty?

8 A That same day.

9 THE COURT: Wait, wait, wait. What was the
10 question? What was the answer?

11 BY MS. STURM:

12 Q How long were you represented by Mr. Boyle before you
13 agreed to plead guilty?

14 A How long, that same day. He represented me that day,
15 and I pled that day.

16 Q How long were you represented by Mr. Boyle before you
17 agreed to cooperate?

18 A How long, that day, that day he represented me.

19 Q What advice, if any, did Mr. Boyle give you about
20 whether to go to trial or plead guilty?

21 A No, he, he told me to plead guilty, told me to
22 cooperate.

23 Q Did you cooperate?

24 A Yes.

25 Q And what did that consist of?

1 A Cooperation?

2 Q Yes.

3 A Of telling them my involvement in the case and how I
4 bought the cars, how I sold them and how I cashed the checks,
5 involved everything.

6 Q And how long a period of time did you spend cooperating
7 with the government?

8 A Oh, came down about five times down to the Federal
9 Building here.

10 Q Was that at your expense?

11 A My expense, yes.

12 Q Did you ever refuse to appear and --

13 A No, no.

14 THE COURT: Would you let her finish the question
15 before you respond.

16 THE WITNESS: Sorry.

17 BY MS. STURM:

18 Q Did you ever refuse to appear and be debriefed by the
19 government after you began your cooperation?

20 A No.

21 Q Did the plead agreement that you entered into require
22 that you plead to a money laundering count?

23 A Yes.

24 Q Did you ask Mr. Boyle why the plea agreement he
25 presented to you included a money laundering count?

1 A Yes.

2 Q What did Mr. Boyle tell you?

3 A Said because I didn't come forward the first time.

4 Q And what's the reason that you hadn't come forward
5 earlier?

6 A I told him -- I told him that Mr. Gephart relayed that
7 they took the plea off the table by telling me that I had to
8 go to trial.

9 MS. STURM: I have no further questions, Your
10 Honor.

11 THE COURT: Cross examine.

12 CROSS EXAMINATION

13

14 BY MS. FAWCETT:

15 Q Mr. Mele, during the period that you were represented
16 by Mr. Gephart, where were you residing?

17 A I was residing at Staten Island.

18 Q And what was your telephone number at your residence in
19 Staten Island?

20 A 356-0129.

21 Q And is it your testimony that --

22 THE COURT: Wait a minute, can I have that
23 telephone number again?

24 THE WITNESS: 356-0129.

25 BY MS. FAWCETT:

1 Q Would that be area code 718-356-0129?

2 A Yes, yes.

3 THE COURT: What was that area code again, I'm
4 sorry?

5 MS. FAWCETT: 718, Your Honor.

6 THE COURT: Thank you.

7 BY MS. FAWCETT:

8 Q And if I understand your testimony correctly, your
9 testimony is that after that initial meeting with Agent
10 Stewart, A.U.S.A. Sally Lied and Attorney Gephart you never
11 spoke to Attorney Gephart after that?

12 A I spoke to him once. I called him up to tell him how
13 much I owed him, how much I owed.

14 Q Okay, during that conversation where you talked to him
15 about how much you owed him, did you have any conversation
16 about your case?

17 A No.

18 Q And how long after your meeting with Sally Lied, Jim
19 Stewart and Attorney Gephart did you have this telephone
20 conversation with Attorney Gephart where you talked about how
21 much you owed him?

22 A About two weeks later.

23 Q And who called who during that conversation?

24 A I called him.

25 Q If I understand your testimony correctly, you told us

1 that you received the impression or you formed the impression
2 following your conversation with Attorney Gephart that the
3 deal was off the table and you had no choice but to go to
4 trial. Is that correct?

5 A Yes.

6 Q Did you -- did you or did you not testify that during
7 the meeting that you had with Agent Stewart and Sally Lied,
8 following that meeting Attorney Gephart met with them, came
9 back and told you that they wanted you to cooperate and that
10 in return for your cooperation, they would drop the money
11 laundering charge?

12 A Yes.

13 Q But you're telling us that you still formed the
14 impression from that same conversation that the cooperation
15 deal was off the table?

16 A Yes.

17 Q Okay.

18 A He says I'm a central figure. He says forget it.

19 Q Isn't it true that at the time you met with Miss Lied
20 and Mr. Stewart and Mr. Gephart you were not aware of other
21 individuals who were cooperating in this case and who might
22 provide information against you?

23 A Yeah, I think I was aware of people that might have
24 come forward, yes.

25 Q Isn't it true that at the time you met with them you

1 were told that you were one of the first individuals that
2 they were approaching for cooperation?

3 A I don't recall.

4 Q I believe your testimony was that you first became
5 aware that you were being investigated because somebody left
6 a card at your door, at your residence in Staten Island?

7 A Yes, yes.

8 Q Whose card was that?

9 A Agent Stewart's.

10 Q Okay, and your recollection is that that was sometime
11 in the year 2000?

12 A Or around, I'm not positive.

13 Q Right, and your testimony was that prior to the meeting
14 with Agent Stewart and Miss Lied you went to Attorney
15 Gephart's office and you discussed nothing?

16 A Discussed what I said before, yes. That's what I said
17 before, we discussed -- he just asked me what my involvement
18 was.

19 Q Prior to the meeting with Agent Stewart and Miss Lied
20 --

21 A Oh, prior to that?

22 Q Yes.

23 A No.

24 Q You discussed nothing?

25 A Nothing.

1 Q And how long approximately was your meeting with Mr.
2 Gephart prior to your meeting with Mr. Stewart and Miss Lied?

3 A Five minutes, 10 minutes. I just waited. He had to
4 make a phone call.

5 Q And what is your recollection concerning how long --
6 how long the meeting with Mr. Stewart and Miss Lied took
7 place, how long a meeting was that?

8 A In the Federal Building --

9 Q Yes.

10 A -- how long? A meeting say about a half hour or so, 45
11 minutes.

12 Q And your best recollection concerning how long the
13 meeting that you had with Mr. Gephart after that meeting?

14 A Twenty minutes, 15, 20 minutes.

15 Q Prior to the time you initially met with Mr. Stewart
16 and Miss Lied had you received any sort of a target letter
17 from the government telling you that you were the target of a
18 federal investigation?

19 A Yes.

20 Q You had?

21 A No. Oh, prior to that, no.

22 Q Okay, and prior --

23 THE COURT: Wait a minute, what was the question?

24 MS. FAWCETT: The question was prior to the time
25 you initially -- he initially met with Mr. Stewart and Miss

1 Lied had he received a target letter from the government.

2 THE WITNESS: I don't recall, no.

3 BY MS. FAWCETT:

4 Q Prior to the time you met with myself, Mr. Stewart and
5 Dennis Boyle you had received a target letter from the
6 government. Is that correct?

7 A Yes.

8 Q And you were aware at that time that other individuals
9 who were involved in this investigation were cooperating and
10 were cooperating against you?

11 A I wouldn't say I was aware of people cooperating
12 against me.

13 Q Did you --

14 A I -- I knew there would be though.

15 Q Okay. Is it fair to say you had discussions with Mr.
16 Boyle concerning the fact that there were other people
17 involved in this investigation who would be or were
18 cooperating against you?

19 A I don't recall.

20 Q You don't recall whether or not you had conversations
21 with Mr. Boyle?

22 A I don't think I did about other people, no.

23 Q And your recollection of these events, have they been
24 -- has your recollection been memorialized in any way?

25 A Been what?

1 Q Your recollection of all these events that you have
2 been telling us about, these meetings and so forth, have you
3 written down your recollection in any way?

4 A Have I written down?

5 Q Yes.

6 A No.

7 Q You did not take notes at the time these events
8 occurred about what was occurring?

9 A No, no.

10 MS. FAWCETT: I have no further questions, Your
11 Honor.

12 THE COURT: Redirect.

13 REDIRECT EXAMINATION

14 BY MS. STURM:

15 Q Mr. Mele, prior to your coming down to meet with Mr.
16 Gephart for the first time were you aware of any arrests that
17 had been made in connection with the crime that brings you
18 here today?

19 A I know people who are under investigation, yes.

20 Q You knew that before you met with Mr. Gephart?

21 A Yeah, my salesman, the one who was selling cars.

22 Q What had happened to him?

23 A Well, he said they said he was, you know, being
24 investigated.

25 Q Had he told you that?

1 A Yes.

2 Q Was there anyone else that you were aware was under
3 investigation at the time you came down to meet with Mr.
4 Gephart?

5 A Where I bought the cars, Merchants Rent-A-Car, that
6 salesman was being questioned.

7 Q Would your -- would the salesman who worked for you
8 have anything incriminating to say about you?

9 A Yes.

10 Q Would the person who was the salesman at the dealership
11 where you purchased the cars, would he have something
12 incriminating to say about you?

13 A Yes.

14 Q When you looked at the documents in the Federal
15 Building, were those documents incriminating to you?

16 A Yes.

17 Q When you met with Mr. Gephart before going over to the
18 Federal Building, did Mr. Gephart give you any advice as to
19 how to behave when you got to the Federal Building, what to
20 do?

21 A All he said was, "You need not say anything at this
22 time."

23 MS. STURM: Your Honor, with the Court's
24 permission, may I show the witness a copy of the 2255 motion
25 filed in this matter?

1 THE COURT: Certainly.

2 THE WITNESS: I need my glasses from on the table.

3 MS. STURM: Your Honor, may I have it marked as

4 P 3.

5 A The glasses, thank you.

6 BY MS. STURM:

7 Q Mr. Mele, is this the 2255 motion that you prepared?

8 A Yes, it is.

9 Q Did you prepare it?

10 A Yes.

11 Q Is there a handwritten statement that you filed with
12 the 2255 motion?

13 A Yes.

14 Q Is it contained within the document I just gave you?

15 A Yes, it is.

16 Q Could you read it through to yourself please.

17 A Read it?

18 Q Just to yourself. Could you look up when you are
19 finished reading.

20 A (Witness reading.)

21 Q Are those your words in that statement, Mr. Mele?

22 A Yes.

23 Q Is there anything in there that's not truthful?

24 A No.

25 Q Is there anything in there that you would withdraw from

1 today?

2 A No.

3 MS. STURM: No further questions, Your Honor.

4 THE COURT: Cross. Recross

5 RECROSS EXAMINATION

6 BY MS. FAWCETT:

7 Q Mr. Mele, if I understand your testimony correctly, you
8 said that you were aware that your salesman was also under
9 investigation at the time Attorney Gephart represented you.
10 Correct?

11 A (Shook head up and down.)

12 Q And what is your --

13 THE COURT: Is that a yes? I didn't get the first
14 response.

15 MS. FAWCETT: I believe there was a nod of yes.

16 THE COURT: Please say yes or no.

17 THE WITNESS: Yes.

18 BY MS. FAWCETT:

19 Q And what is your salesman's name?

20 A Scott Phillips.

21 Q And you said that you were aware that a salesman at
22 Merchants Rent-A-Car was also under investigation. Is that
23 correct?

24 A Yes.

25 Q And what is the salesman's --

1 A Allen Singer.

2 Q Excuse me?

3 A Allen Singer.

4 Q And did you talk to either Scott Philips or Allen
5 Singer concerning the investigation?

6 A Not concerning, no, I didn't, not concerning the
7 investigation, I did not talk to them about that.

8 Q Okay. Did you talk to them concerning whether or not
9 they were cooperating with the government?

10 MS. STURM: Can we have the time period for this
11 please, Your Honor.

12 THE COURT: Well, he has to put the time. He said
13 that he was aware, and I think she's asking at the time he
14 was aware did he talk to them. That's my interpretation of
15 the question.

16 MS. FAWCETT: Your Honor, I believe that's correct,
17 the initial question was directed to during the time period
18 he was represented by Mr. Gephart.

19 THE COURT: I'm sorry, let's rephrase the question.

20 BY MS. FAWCETT:

21 Q If I understand your testimony correctly, you told us
22 that during the time period that you were represented by Mr.
23 Gephart you were aware that Scott Phillips and Allen Singer
24 were also the targets of a federal investigation. Is that
25 correct?

1 A I -- yes, I was aware they were under investigation.

2 Q All right, during that time period, during the time
3 period you were represented by Mr. Gephart, did you have
4 conversations with either Allen Singer or Scott Phillips
5 concerning whether or not they were cooperating with the
6 government?

7 A No, I didn't have conversations whether they were
8 cooperating.

9 Q So you did not know whether Scott Phillips or Allen
10 Singer were cooperating with the government at that time. Is
11 that correct?

12 A Yes.

13 Q You did not know that?

14 A I didn't know if they were cooperating, but I knew they
15 were under investigation.

16 MS. FAWCETT: All right, I have no further
17 questions.

18 THE COURT: You may step down.

19 MS. STURM: Your Honor, I don't have any further
20 testimony to present. It's my understanding that the
21 government is calling Mr. Gephart as its witness.

22 MS. FAWCETT: That's correct, Your Honor.

23 MS. STURM: However, if the Court would permit, I
24 do have the docket entries printed off from Pacer of Mr. Mele
25 and the following defendants: Scott Phillips; Richard Ball;

1 Dean Parasconda, P-a-r-a-s-c-o-n-d-a; Anselmo Plumitallo,
2 A-n-s-e-l-m-o P-l-u-m-i-t-a-l-l-o; Ralph Tufano, T-u-f-a-n-o;
3 Wesley Johnson; Salvatore Caliendo, C-a-l-i-e-n-d-o; Abraham
4 Zucker, Z-u-c-k-e-r; and I would request to introduce these
5 documents as records kept during the normal course of
6 business to establish the charges to which the
7 co-conspirators were allowed to plead and the sentences that
8 were imposed on the co-conspirators by Your Honor.

9 THE COURT: Any objection?

10 MS. FAWCETT: I have no objection to the documents.
11 I do have a comment with respect to whether or not that's
12 relevant to establish what's been alleged in the petition.

13 THE COURT: You can argue that.

14 MS. FAWCETT: At this point, Your Honor?

15 THE COURT: No.

16 MS. STURM: I believe that would be P 4 through 12
17 then, Your Honor.

18 THE COURT: Okay, fine.

19 MS. STURM: The petitioner would rest its case,
20 Your Honor.

21 THE COURT: Miss Fawcett.

22 (The testimony of the next witness, Smith B.
23 Gephart, can be found in it's entirety in a separate
24 transcript.)

25 THE COURT: Any further witnesses?

1 MS. FAWCETT: No, Your Honor.

2 THE COURT: I'll entertain brief argument from both
3 of you.

4 MS. FAWCETT: May I move for the admission of our
5 exhibits, Your Honor?

6 THE COURT: Yes, yes.

7 MS. FAWCETT: I would like to move for the
8 admission of Exhibits 1 through 3. I think there has also
9 been testimony concerning two letters which have not been
10 marked. I'll mark them Exhibit 4 and 5 and move for their
11 admission as well.

12 THE COURT: Any objection?

13 MS. STURM: I don't object, Your Honor, and I would
14 move for the admission of plaintiff's exhibits as well.

15 THE COURT: They're admitted.

16 Just for everybody's sake, the letter that starts
17 with the purpose -- I don't know which May 17 letter should
18 come first, so -- is there a difference?

19 MS. FAWCETT: One is the Castigar letter, and I had
20 intended to mark that as No. 4, and that is the one that
21 starts as you know --

22 THE COURT: Okay, that would be Government Exhibit
23 4. Next would be Government Exhibit 5. Okay.

24 Monica, you don't have to take the argument unless
25 counsel wants the argument on the record.

1 MS. FAWCETT: No, Your Honor.

2 MS. STURM: No, Your Honor.

3 (Ms. Sturm made an argument off the record.)

4 THE COURT: You better put this on the record,
5 Monica. On a memo to me from the probation officer May 9,
6 2002, a recent discussion about Mr. Mele and Mr. Zucker's
7 money laundering offenses -- then there is a lot there --
8 A.U.S.A. Christy Fawcett candidly noted that while all the
9 defendants likely laundered proceeds of the scheme through
10 the purchase of additional cars, in Mele's and Zucker's cases
11 the government has actual checks that they endorsed over to
12 Merchants Rent-A-Car to buy more automobiles. This evidence
13 was apparently used by the government in plea negotiations,
14 and the defendants later agreed to plead to money laundering.
15 So it was apparently that piece of evidence against Zucker
16 and Mele that they didn't have against the other defendants.

17 MS. FAWCETT: May I address that briefly, Your
18 Honor? That is the issue that I was concerned about earlier
19 when I indicated to the Court that there was something I
20 wanted to present argument about. The disparity in what the
21 charges -- in what charges the defendant pled to was not
22 something that was raised in a 2255 petition. The first time
23 that that comes up is in the memorandum of law that was
24 served on me yesterday afternoon. Because of that I did not
25 prepare to either have somebody either question me about that

1 or question Agent Stewart about that. If the Court thinks
2 that that is going to be important in its decision, I would
3 request that we be able to bring in a witness, either myself
4 or Agent Stewart.

5 However, I will represent to the Court exactly what
6 is in that document. I wasn't aware that document existed,
7 but I will represent as an officer of the court that the
8 government's case as to money laundering, although we
9 certainly suspected the other defendants may have been
10 involved in money laundering as well, what we had with
11 respect to Mr. Zucker and Mr. Mele was we had checks that
12 were, as I recall, checks from Merchants or checks from
13 Manheim Auto Auction for the sale of cars that were cars sold
14 in this odometer scheme through Manheim Auto Auction. Those
15 checks were then taken back up by Mr. Zucker and Mr. Mele to
16 Merchants Rent-A-Car to purchase more cars that were then
17 made part of this whole process. Because of that we felt
18 that we had documentary evidence which established a charge
19 of money laundering against those two but not against the
20 other defendants. Again I wasn't prepared to respond to that
21 with testimony because it was only raised in the memorandum
22 of law that I received late yesterday afternoon.

23 THE COURT: Go ahead.

24 MS. STURM: Your Honor, in any event, there was
25 testimony that was part of plea negotiations that the money

1 laundering count could have been dropped if Mr. Mele had
2 cooperated sooner, and although Mr. Mele and Mr. Ball were
3 supposed to be partners, and that's how they were described
4 in the presentence report, Mr. Ball received a sentence of 12
5 months, and the sentences ranged from 6 months to 15 months
6 otherwise, and Mr. Zucker, even with the money laundering
7 charge, received a sentence of 24 months. So we have Mr.
8 Mele certainly was not the central figure in this offense
9 receiving a sentence of 30 months despite what the government
10 described as valuable cooperation. The government also
11 tempered that by saying that the cooperation was late, that
12 he had been given an opportunity before.

13 In Stricklin v. Washington --

14 THE COURT: I'm familiar with the case.

15 MS. STURM: All Mr. Mele needs to prove is that
16 there is a reasonable probability for the inadequate
17 assistance of counsel that caused the loss of a substantive
18 procedural right.

19 I assume the Court has also received my memorandum
20 of law, so I won't dwell on all the cases that I have cited
21 in there except to say that I think the overall tenor of the
22 cases that are cited is that Mr. Mele is entitled to
23 effective assistance of counsel in connection with the
24 decision whether to plead guilty or stand trial.

25 THE COURT: I agree with the law. I think the

1 issue we're facing is basically a factual situation.

2 MS. STURM: But listening to the testimony of Mr.
3 Gephart, it is a classic Beria v. Keane case, classic day
4 case where Mr. Mele was entitled to the benefit of counsel to
5 understand the charges against him, to have some rudimentary
6 explanation of the guidelines, a meaningful explanation of
7 the guidelines, and most of all what the cases are unanimous
8 on, Cullen, Day, Paders, Beria v. Keane, it is not sufficient
9 for defense counsel to say, "Here's two options to you, plead
10 guilty or go to trial. Get back to me when you have made up
11 your mind what you want to do." If there is anything that is
12 clear in that line of cases is that is not effective
13 assistance of counsel, but what Beria v. Keane says is
14 required is that the defendant's counsel must give him his
15 professional advice as to what is the best course of action
16 to him to resolve the charges against him. He must give him
17 his professional advice, and it could not be clearer that at
18 this crucial proceedings by --

19 THE COURT: You don't need to take this.

20 (Ms. Sturm continued her argument off the record.
21 Ms. Fawcett made an argument off the record.)

22 THE COURT: I'll take the matter under advisement.

23 MS. STURM: Your Honor, could the marshals be
24 notified by whomever it is that would need to know Mr. Mele
25 does have a number of health problems, that the writ is

1 satisfied and he can return to Schuylkill as soon as
2 possible?

3 THE COURT: There is nothing detaining him,
4 whenever the marshal's schedule can get him there, they will
5 get him there.

6 MS. STURM: Thank you, Your Honor.

7 (The proceedings concluded.)
8

9 I hereby certify that the proceedings and evidence
10 of the court are contained fully and accurately in the notes
11 taken by me on the hearing of the within cause and that this
12 is a correct transcript of the same.

13 Monica L. Zamiska

14 Monica L. Zamiska, RPR

15 Official Court Reporter
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